

**U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

Fiscal Year 2017

Annual Report to Congress  
Pursuant to the  
Notification and Federal Employee  
Antidiscrimination and Retaliation  
Act of 2002

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## **I. EXECUTIVE SUMMARY**

The U.S. Environmental Protection Agency (EPA or Agency) provides its Annual Report to Congress as required by Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174. As required, this report includes information related to the number of discrimination and retaliation cases in Federal court pending or resolved in fiscal year (FY) 2017 and, their disposition; reimbursement(s) to the Judgment Fund; and the number of employees disciplined for discrimination, retaliation and harassment, and the nature of the disciplinary action taken.

During FY 2017, there were a total of ten cases pending before Federal courts. Among these cases, there were six (6) claims of violation of Title VII, three (3) claims of violation of the Rehabilitation Act, three (3) claims of violation of the Age Discrimination in Employment Act, and one (1) claim of whistleblower retaliation under 5 U.S.C. § 2302.

In addition, the No FEAR Act requires Federal agencies to post the total number of final actions involving a finding of discrimination, along with the issues in and bases for such complaints. In 2017, EPA had one (1) final action involving a finding of discrimination.

EPA is dedicated to establishing and maintaining a model civil rights program that serves as an example for all Federal agencies. EPA's commitment to this goal is reflected in the subject report which the Agency respectfully submits for review.

## **II. BACKGROUND**

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," or, as it is more commonly known, the No FEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." Public Law 107-174, Summary. In support of this purpose, Congress found that "agencies cannot be run effectively, if they practice or tolerate discrimination." Public Law 107-174, Title I, General Provisions, section 101(1).

Section 203 of the No FEAR Act requires that each Federal agency submit an annual report to Congress not later than 180 days after the end of each fiscal year. Agencies must report on the number of Federal court cases pending or resolved in each fiscal year arising under each of the respective areas of law specified in the Act in which discrimination or retaliation was alleged. In connection with those cases, agencies must report their status or disposition; the amount of money required to be reimbursed to the Judgment Fund; and the number of employees disciplined in any cases, Federal court or otherwise, of discrimination, retaliation, or harassment. Agencies must also report on any policies implemented related to appropriate disciplinary actions against a Federal employee who discriminated against any individual, or committed a prohibited personnel practice; any employees disciplined under such a policy for conduct inconsistent with Federal antidiscrimination laws and whistleblower protection laws; and an analysis of the data collected relative to trends, causal analysis, and other information.

The Act imposes additional duties upon Federal agency employers intended to reinvigorate their longstanding obligation to provide a work environment free of discrimination and retaliation. The additional obligations contained in the No FEAR Act can be broken down into four (4) categories:

- A Federal agency must reimburse the Judgment Fund for payments made to employees, former employees, or applicants for Federal employment because of actual or alleged violations of Federal employment discrimination laws, Federal whistleblower protection laws, and retaliation claims arising from the assertion of rights under those laws.
- An agency must provide annual notice to its employees, former employees, and applicants for Federal employment concerning the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- At least every two (2) years, an agency must provide training to its employees, including managers, regarding the rights and remedies available under the employment discrimination and whistleblower protection laws.
- Quarterly, an agency must post on its public website summary statistical data pertaining to Equal Employment Opportunity (EEO) complaints filed with the agency.

The President delegated responsibility to the Office of Personnel Management (OPM) for issuance of regulations governing implementation of Title II of the No FEAR Act. OPM published final regulations on the reimbursement provisions of the Act on May 10, 2006. Final regulations to carry out the notification and training requirements of the Act were published on July 20, 2006, and OPM published the final regulations to implement the reporting and best practices provisions of the No FEAR Act on December 28, 2006. The EEOC published its final regulations to implement the posting requirements of Title III of the No FEAR Act on August 2, 2006. The EPA has prepared the subject report based on the provisions of the No FEAR Act in accordance with OPM's and EEOC's final regulations.

### **III. DATA**

#### **a. Civil Cases**

Section 203(a)(1) of the No FEAR Act requires that agencies include in their Annual Report "the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged." Section 724.302 of OPM's final regulations on reporting and best practices clarifies section 203 (1) of the No FEAR Act, stating that agencies report on the "number of cases in Federal Court [district and appellate] pending or resolved...arising under each of the respective provisions of the Federal Antidiscrimination Laws and Whistleblower Protection Laws applicable to them...in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved."

During FY 2017, there were a total of ten cases pending before Federal courts. Among these cases, there were six (6) claims of violation of Title VII, three (3) claims of violation of the Rehabilitation Act, three (3) claims of violation of the Age Discrimination in Employment Act, and one (1) claim of whistleblower retaliation under 5 U.S.C. § 2302.

Of the ten cases noted above, three are at the pre-trial discovery stage; one has been scheduled for trial; one is pending a decision on a dispositive motion; one is pending a decision on a post-verdict motion filed after a jury verdict against the agency; and four are on appeal of trial court decisions for the agency.

#### **b. Reimbursement to the Judgment Fund**

During FY 2017, the agency was not required to reimburse the Judgment Fund for any civil cases.

#### **c. Disciplinary Actions (5 Code of Federal Regulations (C.F.R.) § 724.302 (a)(3) & (5))**

There were no employees disciplined in FY 2017, in connection with any cases described in paragraph (a) above, or for any other conduct that is inconsistent with Federal antidiscrimination laws and whistleblower protection laws or for conduct that constitutes prohibited personnel practices. Discipline as defined in § 724.102 means any one or a combination of the following actions: reprimand, suspension without pay, reduction in grade or pay, or removal.

#### **d. Final Year-End Data Posted Under Section 301(c)(1)(B)**

The final year-end data posted pursuant to section 301(c)(1)(B) of the No FEAR Act are included in Appendix 1. The final year-end data indicates that during FY 2017, there was a ten percent (10%) decrease in the number of formal complaints filed compared to FY 2016. In FY 2016, eighty-six (86) formal complaints of discrimination were filed with the agency. During FY 2017, there were seventy-eight (78) new formal complaints of discrimination filed by seventy-five (75) employees or applicants for employment. FY 2017 saw the third highest number of formal complaints filed since the Agency began tracking the data in accordance with the No FEAR Act.

During FY 2017, EPA's Office of Civil Rights (OCR) saw a slight increase in the average number of days of an investigation, by fifteen percent (15%), but still eight percent (8%), or 20 days, below the Agency five-year average of 270.73 days for completion of investigations.

FY 2017 complaint totals can be found in their entirety at Appendix 1 of this report.

#### **e. Policy Description on Disciplinary Actions (5 C.F.R. § 724.302(a)(6))**

The FY 2016 EEO policy, addresses a variety of topics, including prohibition of discrimination in the workplace, and it includes a reminder to all employees that the agency will review any finding of discrimination and take disciplinary or corrective action, when appropriate. The EEO

Policy, as well as information on addressing harassment and reasonable accommodation, was discussed in EPA's mandatory Successful Leaders Program for all new Agency supervisors. The 2016 EEO Policy can be found in its entirety at Appendix 4 of this report:

Additionally, EPA Order 3110.6B, *Adverse Actions*, EPA Order 3120.1B, *Conduct and Discipline*, EPA Order 3120.2, *Conduct and Discipline, Senior Executive Service*, and applicable collective bargaining agreements, provide guidance to managers about the type of disciplinary actions that may be taken, when appropriate, in response to a finding of discriminatory behavior or conduct. These actions may range from informal corrective actions, including oral admonishments and written warning, to more formal disciplinary actions such as a suspension without pay or removal.

EPA has an ongoing commitment to continue to include clear expectations about EEO in performance standards for managers. EPA has maintained revised Senior Executive Service standards that not only focus on preventing discrimination in hiring activities and promoting merit systems principles, but also require senior leaders to be personally involved in leading and implementing EEO and civil rights initiatives consistent with applicable laws. In addition, at the end of every performance cycle, the Director of OCR, Performance Review Board members, and Executive Review Board members evaluate management self-assessments to ensure that the respective rating is an appropriate reflection of the accomplishments listed.

**f. No FEAR Act Training Plans (5 C.F.R. § 724.302 (a)(9))**

No FEAR Act training was required for current agency employees in FY 2016. During this period, the Agency saw a 99% completion rate for No FEAR Act training. Additionally, new employees were required to take the training within their first 90 days of onboarding. The agency is committed to achieving a 100% completion rate for current employees for FY 2018.

**IV. ANALYSIS OF TRENDS, CAUSAL ANALYSIS AND PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE (5 C.F.R. § 724.302 (a)(7))**

At the conclusion of FY 2017, the bases of alleged discrimination most often raised were: (1) retaliation; (2) race; and (3) age. The seventy-eight (78) EEO complaints filed in EPA in FY 2017 contained forty-six (46) allegations of retaliation, forty-one (41) allegations of race discrimination, and forty (40) allegations of age discrimination. While retaliation remains the top basis alleged in complaints filed, it should be noted that retaliation and age are among the top bases most frequently alleged in discrimination complaints throughout the entire Federal workforce.<sup>1</sup> There was no notable complaint activity to indicate an unusual trend in complaint activity in any specific office or Region.

The data shows that of the Agency's total workforce of 15,741, only 0.49% of the agency employees filed complaints during FY 2017. This percentage falls below the last reported

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<sup>1</sup> As reported in FY 2014 Report of the Federal Workforce. <http://www.eeoc.gov/federal/reports/fsp2014/index.cfm>.

government-wide average of 0.5% of the workforce that filed formal complaints.<sup>2</sup> EPA continues to stress training as a method for ultimately reducing the number of Federal court judgments, awards, and formal complaints, by having managers and staff continuously expand their knowledge of their responsibilities to promote equal employment opportunity. Additionally, EPA promotes training to help employees understand they also have a role in creating a workplace that promotes EEO.

EPA completed investigations for complaints pending during FY 2017 with an average processing time of 250 days. Although the average number of days to complete an investigation increased from 213 in FY 2016 to 250 in FY 2017, the number of untimely completed investigations decreased from seven (7) in FY 2016 to only two (2) in FY 2017. We attribute this major reduction in untimely investigations to OCR's case managers being more proactive during the investigative process and obtaining extensions from Complainants.

#### **V. ADJUSTMENTS TO BUDGET (5 C.F.R. § 724.302(a)(2)(ii))**

As reported, during FY 2017, the agency was not required to reimburse the Judgment Fund.

#### **VI. ACTIONS PLANNED OR TAKEN TO IMPROVE COMPLAINT OR CIVIL RIGHTS PROGRAMS (5 C.F.R. § 724.302 (a)(7)(iv))**

EPA has taken and planned several initiatives to strengthen its commitment to civil rights and equal employment opportunity in the workplace:

- Significant progress resulted from the FAD docket reduction initiative, including the issuance of thirty-two (32) FADs during the fiscal year. This is a remarkable increase from the eight (8) FADs issued in FY 2016. At the end of FY 2017, OCR and the Office of General Counsel assembled a cadre of agency volunteers to assist in the drafting and legal review of decisions to eliminate EPA's inventory of untimely FADs. OCR plans to continue to utilize this cadre of volunteers, in addition to the OCR staff attorneys, to ensure FADs are issued within the 60-day regulatory timeframe.
- During the reporting period, OCR has undertaken a Lean Management System initiative. Lean is a set of practices and tools that support all members of an organization in identifying and solving problems where they occur. The goal is continuous improvement of the discrimination complaints process to assist the agency in offering a model EEO program and to identify ways to optimize the investigative and FAD issuance process. We will implement "standard work" to streamline our internal processes and minimize disruptions in workflows. Standard work will require documentation of all processes, including regular meetings, delivery of work products, and problem elevation. Managers and leaders also will have standard work. As we apply the standard work approach, OCR will continuously improve the EEO program's processes and performance.

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<sup>2</sup> As reported in FY 2014 Report of the Federal Workforce. <http://www.eeoc.gov/federal/reports/fsp2014/index.cfm>.

- OCR is focused on improving processing time in accepting/dismissing complaints. In addition to imposing time elements in its EEO professionals' performance plans, the agency has two full-time attorneys among its staff in the civil rights office to assist in legal research when making determinations for acceptance/dismissal letters and provide EEOC case law in its analyses to support dismissal decisions.
- EPA will increase its efforts to market the ADR program during the informal phase of EEO counseling, via centralized EEO intake. OCR anticipates that using ADR in this way will help reduce costs associated with adjudicating formal complaints. OCR will continue using the shared neutrals programs and its own cadre of volunteer, trained mediators in regions and headquarters at no cost to EPA. OCR will market and promote ADR as part of an overall agency policy for early resolution of workplace disputes.
- OCR will continue to monitor and evaluate its current Standard Operating Procedures for investigations and its Statement of Work with the United States Postal Service, its investigative contractor. OCR will make adjustments to promote the efficiency of the investigative process with the goal of completing investigations within the regulatory time-frame requirement.
- Within the EPA, every member of the Senior Executive Service has had a performance standard related to equal employment opportunity and diversity in the workplace for several years. Senior managers must outline the specific related initiatives and actions they have personally undertaken and the results or effectiveness of those actions. At the end of every performance cycle, the Director of the Office of Civil Rights, Performance Review Board members, and Executive Review Board members review these managers' self-assessments to verify that the respective rating for the EEO performance standard is a reflection of the accomplishments listed.
- All EPA EEO investigators and counselors received the required annual training and/or refresher training in accordance with EEOC's Management Directive 110.
- EPA works to comply with orders from EEOC Administrative Judges in a timely manner. In addition, timely compliance with court orders is a factor that is included in the performance standard of the Office of Civil Rights, Assistant Director for Employment Complaints Resolution Staff (ECRS). In addition, EPA has established systems to ensure that the agency initiates any monetary or other relief in a timely manner.
- OCR posts all No FEAR statistics on the OCR website on a quarterly basis.
- OCR makes presentations during the bi-weekly new employee orientations to ensure that all new employees are notified of the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws. New employees are also reminded of their obligation to complete No Fear Training within ninety (90) days of onboarding.



- The Civil Rights Director and EEO Officials across the agency participate in briefings, listening sessions, and brainstorming sessions to discuss EEO with managers, senior leaders and employees in order to identify and address any potential barriers and specific action items that can continue to improve the agency's EEO and Civil Rights program.

# APPENDIX 1

## Equal Employment Opportunity Data Posted Pursuant to the No Fear Act:

### EPA (and below)

*For 4th Quarter 2017 for period ending September 30, 2017*

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2017Thru09-30
	2012	2013	2014	2015	2016	
Number of Complaints Filed	79	62	48	58	86	78
Number of Complainants	77	59	45	57	83	75
Repeat Filers	2	3	3	1	3	3
Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2017Thru09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2012	2013	2014	2015	2016	
Race	40	22	23	25	33	41
Color	13	7	10	11	17	17
Religion	9	4	3	5	11	3
Reprisal	44	31	28	30	60	46
Sex	42	27	14	27	37	38
PDA	0	0	0	0	0	0

National Origin	13	12	10	11	15	13
Equal Pay Act	1	1	1	2	3	1
Age	37	22	22	28	41	40
Disability	25	19	18	18	34	31
Genetics	0	0	0	1	0	0
Non-EEO	8	7	6	6	7	5
Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2017Thru09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2012	2013	2014	2015	2016	
Appointment/Hire	5	5	7	5	6	4
Assignment of Duties	12	5	5	16	13	11
Awards	5	0	3	4	2	4
Conversion to Full Time/Perm Status	2	0	0	0	0	0
Disciplinary Action						
Demotion	0	0	0	0	0	1
Reprimand	2	3	6	2	9	3
Suspension	2	6	4	0	8	4
Removal	2	0	3	2	5	4
Letter of Warning	0	0	0	0	3	3
Duty Hours	3	2	0	0	1	3
Perf. Eval./ Appraisal	21	9	5	5	21	7
Examination/Test	0	0	0	0	0	0

<b>Harassment</b>						
Non-Sexual	32	22	19	28	49	46
Sexual	1	2	1	3	3	5
Medical Examination	0	0	0	0	0	0
Pay including overtime	4	1	0	1	3	4
Promotion/Non-Selection	26	10	8	5	9	21
<b>Reassignment</b>						
Denied	3	0	2	3	1	3
Directed	5	2	2	1	6	2
Reasonable Accommodation Disability	7	9	3	4	13	12
Reinstatement	0	0	0	0	1	0
Religious Accommodation	0	0	0	0	0	1
Retirement	2	1	2	1	1	1
Sex-Stereotyping	0	0	0	0	0	1
Telework	0	0	0	0	7	5
Termination	5	4	1	1	3	4
Terms/Conditions of Employment	19	12	11	10	22	18
Time and Attendance	18	7	2	8	10	10
Training	11	2	6	6	2	7
<b>Other</b>						
User Defined - Other 1	0	0	0	0	0	0
Other	0	0	0	0	0	2
User Defined - Other 3	0	0	0	0	0	0

User Defined - Other 4		0	0	0	0	0	0
Processing Time	Comparative Data						
	Previous Fiscal Year Data					2017Thru09-30	
	2012	2013	2014	2015	2016		
Complaints pending during fiscal year							
Average number of days in investigation	326.57	311.07	245.08	257.40	213.51	250.39	
Average number of days in final action	409.47	198.44	289.65	321.81	300.90	499.29	
Complaint pending during fiscal year where hearing was requested							
Average number of days in investigation	324.42	314.44	249.50	259.25	224.92	238.10	
Average number of days in final action	326.57	35.00	12.00	36.00	26.27	443.17	
Complaint pending during fiscal year where hearing was not requested							
Average number of days in investigation	328.83	306.58	233.87	253.36	198.75	261.03	
Average number of days in final action	467.50	218.88	375.08	607.62	840.83	488.68	

Complaints Dismissed by Agency	Comparative Data											
	Previous Fiscal Year Data										2017Thru09-30	
	2012		2013		2014		2015		2016			
Total Complaints Dismissed by Agency	10		6		9		6		11		1	
Average days pending prior to dismissal	212		123		258		99		130		132	
Complaints Withdrawn by Complainants												
Total Complaints Withdrawn by Complainants	12		19		3		8		10		6	
Total Final Agency Actions Finding Discrimination	Comparative Data											
	Previous Fiscal Year Data										2017Thru09-30	
	2012		2013		2014		2015		2016			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		1		1		0		1	
Without Hearing	0	0	0	0	0	0	0	0	0	0	1	100
With Hearing	0	0	0	0	1	100	1	100	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2017Thru09 -30	
	2012		2013		2014		2015		2016			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>												
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	1		0		1		1		0		0	
Race	0	0	0	0	1	100	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	1	100	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	1	100	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	1	100	0	0	0	0	0	0
Disability	0	0	0	0	0	0	1	100	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0

Findings After Hearing	0		0		1		1		0		0	
Race	0	0	0	0	1	10 0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	1	10 0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	1	10 0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	1	100	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	1		0		0		0		0		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	1	100	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0



PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings of Discrimination Rendered by Issue	Comparative Data											
	Previous Fiscal Year Data										2017Thru09-30	
	2012		2013		2014		2015		2016			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	1		0		1		1		0		0	
Appointment/Hire	0	0	0	0	1	100	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0

Letter of Warning	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	1	100	0	0	0	0
Perf. Eval./ Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/ Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	1	100	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	0	0	1	100	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0

Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Define												
User Defined - Other 1	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	0		0		1		1		0		0	
Appointment/Hire	0	0	0	0	1	100	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0

Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Letter of Warning	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	1	100	0	0	0	0
Perf. Eval./ Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/ Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	0	0	1	100	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0

Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Define												
User Defined - Other 1	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	1		0		0		0		0		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0

Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Letter of Warning	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Eval./Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	1	10	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0

Reasonable Accommodation Disability	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Define												
User Defined - Other 1	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0	0	0	0	0	0	0

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data					
	Previous Fiscal Year Data					2017Thru09- 30
	2012	2013	2014	2015	2016	
Total complaints from previous Fiscal Years	59	87	87	87	84	109
Total Complainants	52	79	82	78	76	98
<b>Number complaints pending</b>						
Investigation	20	11	3	1	5	1
ROI issued, pending Complainant's action	3	3	0	0	0	0
Hearing	38	59	65	68	47	59
Final Agency Action	12	22	20	20	40	47
Appeal with EEOC Office of Federal Operations	8	15	13	14	41	43
Complaint Investigations	Comparative Data					
	Previous Fiscal Year Data					2017Thru09- 30
	2012	2013	2014	2015	2016	
Pending Complaints Where Investigations Exceed Required Time Frames	31	22	3	2	7	2



## APPENDIX 2



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 15 2014

### MEMORANDUM

**SUBJECT:** Anti-Harassment Policy Statement

**FROM:** Gina McCarthy

A handwritten signature in black ink, appearing to read "Gina McCarthy", is written over the "FROM:" line.

**TO:** All Employees

I want to reaffirm the U.S. Environmental Protection Agency's commitment to prohibit harassment of any kind, as clearly stated in our agency's anti-harassment policy. Harassment is unlawful when it is directed at an individual because of a lawfully protected basis and is sufficiently severe or pervasive that it creates a hostile work environment or takes the form of a tangible employment action. It is EPA policy to ensure that appropriate measures are implemented to prevent harassment, either sexual or nonsexual, in the workplace and to correct harassing conduct before it becomes severe or pervasive. EPA policy also strictly prohibits any retaliation against an employee who reports a concern about workplace harassment or assists in any inquiry about such a report.

For the purposes of this policy, unlawful harassment is defined as any unwelcome verbal or physical conduct based on race; color; sex, including pregnancy and gender identity/expression; national origin; religion; age; prior protected Equal Employment Opportunity activity; protected genetic information; sexual orientation or status as a parent when:

- the behavior can reasonably be considered to adversely affect the work environment; or
- an employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Sexual harassment can be either a form of harassment based on a person's sex that need not involve conduct of a sexual nature or harassment involving any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature when:

- submission to such conduct is made explicitly or implicitly a term or condition of an employee's job, pay or career;
- submission to or rejection of such conduct by an employee is used as a basis for career or employment decisions affecting that employee; or
- such conduct has the purpose or effect of unreasonably interfering with an employee's performance or creates an intimidating, hostile or offensive environment.

Sexual harassment need not involve members of the opposite sex and can be perpetrated by and against members of either sex.

Examples of workplace harassment include:

- Oral or written communications that contain offensive name calling, jokes, slurs, negative stereotyping, hostility or threats. This includes comments or jokes that are distasteful or targeted at individuals or members of the lawfully protected bases set forth above.
- Nonverbal conduct, such as staring, leering and giving inappropriate gifts.
- Physical conduct, such as assault or unwanted touching.
- Visual images, such as derogatory or offensive pictures, cartoons or drawings. Such prohibited images include those in hard copy or electronic form.

The EPA does not permit harassment by or against anyone in the workplace. This includes any employee, applicant for EPA employment, grantee, contractor, Senior Environmental Employment enrollee or Federal Advisory Committee Act member. Workplace harassment should be reported immediately by the affected person to a first-line supervisor, a higher-level supervisor or manager in her or his chain of command, the Office of Inspector General or Labor and Employee Relations staff, as appropriate. Supervisors, in consultation with their human resources or legal offices, must conduct prompt, thorough and impartial inquiries.

If necessary and to the extent possible, measures must be taken to safeguard the anonymity of employees who file complaints. If management, in consultation with legal counsel, determines that harassment has occurred, it must be corrected as soon as possible. Harassing conduct by EPA employees need not rise to the level of unlawful harassment for it to constitute misconduct subject to corrective or disciplinary action.

In addition, EPA employees or applicants for employment may also use the complaint process established by the U.S. Equal Employment Opportunity Commission to file a complaint of harassment based on race, color, sex, religion, national origin, age, disability, prior protected EEO activity and protected genetic information for individual redress. To invoke that process, EPA employees and applicants must contact an EEO counselor within 45 days of an alleged incident of harassment. Reporting harassment to a supervisor in accordance with the previous paragraph does not satisfy this requirement and does not invoke the EEOC's process. EPA employees or applicants for employment may also report harassment based on sexual orientation and status as a parent to the EPA Office of Civil Rights.

Should you have any questions or need additional information about this policy, please contact the EPA Office of Human Resources at (202) 564-4646 or the EPA Office of Civil Rights at (202) 564-7272. Additional resources are available by visiting [intranet.epa.gov/civilrights/lawsandstatus.htm](http://intranet.epa.gov/civilrights/lawsandstatus.htm).

## APPENDIX 3

# EPA ORDER

Classification No.: 4711

Approval Date: 11/20/2016

Review Date: 11/20/2018

### PROCEDURE FOR ADDRESSING ALLEGATIONS OF WORKPLACE HARASSMENT

#### I. PURPOSE.

All employees shall be treated fairly and equitably and without discrimination. The purpose of this order is to prevent and address incidents of harassment (as defined herein) in the U.S. Environmental Protection Agency's (EPA or agency) workplace and to provide a consistent and effective procedure for responding to allegations of harassment. This Order supplements EPA's Anti-Harassment Policy and established a procedure for:

- x Prompt reporting of allegations of harassment;
- x Prompt inquiry into allegations of harassment, and
- x Prompt and appropriate corrective action as necessary.

#### II. BACKGROUND.

This order is not intended to replace or impede the Equal Employment Opportunity Commission discrimination complaint process found at Title 29 C.F.R. Part 1614, the discrimination complaint process in EPA Order 1000.31A4, *Discrimination on the Basis of Sexual Orientation, Status as a Parent, Marital Status or Political Affiliation*; the Agency's administrative grievance process set forth in EPA Order 3110.8 A2, *EPA Administrative Grievance System*; or negotiated grievance processes for employees in collective bargaining units, and it does not alter the filing deadlines for invoking those processes. This order sets forth a procedure separate from those processes. Complaints of harassment may be made under this order irrespective of whether any other applicable process is invoked, and may be made in addition to other applicable processes.

#### III. APPLICABILITY.

This order applies to allegations of harassment based on race, color, sex (including pregnancy, sex stereotyping, gender identity or expression), national origin, religion, age, disability, prior protected Equal Employment Opportunity activity, sexual orientation, status as a parent, marital status, political affiliation, and protected genetic information.

This order, and the procedures contained herein, also apply to other types of harassment (e.g. actions that are threatening, intimidating, bullying and/or disturbing) but not alleged to be based on the protected classes listed above.<sup>3</sup>

This order applies to all EPA employees and applicants for employment, and to other persons included in the definition of "affected person" described in this order, and will be used by the agency to address allegations of workplace harassment regardless of who makes them or who the alleged harasser may be.

The information contained in this order does not create any independent rights and/or obligations enforceable in law or equity in any civil or criminal matter. This order and any procedures contained herein may not be construed to limit the otherwise lawful investigative, administrative, or prosecutorial prerogatives of the agency, its Office of the Inspector General, or the U.S. Department of Justice. The information contained in this order also does not supersede existing collective bargaining agreements and/or related statutory rights.

**A. RELATIONSHIP OF THE PROCEDURES PROVIDED UNDER THIS ORDER TO THE EQUAL EMPLOYMENT OPPORTUNITY AND GRIEVANCE PROCESSES.**

1. The procedures provided under this order do not extend, modify or otherwise alter the procedures, including the timeframes, provided in the EEO process, the grievance processes, or any other complaint process available to agency employees, former employees or applicants for employment.
2. This order creates an administrative process for reporting, inquiring into and, as needed, taking action to address complaints of harassment, as defined in Section IV, and that process is independent of the EEO process.
3. Reports of harassment related to an EEO complaint that come to the attention of a supervisor, manager, or agency Human Resource Official, require initiation of an inquiry based upon this order and will not impact the disposition of a complaint filed in another forum. Employees reporting a claim of harassment relating to the protected EEO categories described above, should be informed of the applicable EEO process.

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<sup>3</sup> Such as bullying of an employee based on his/her grade (GS) level or educational background, union activity, etc.

4. Affected persons may report incidents of harassment under this order even if they initiate the EEO process through the Agency's Office of Civil Rights or if they invoke any other complaint procedure.
5. For further details on how to file an EEO complaint, in addition to or independent of the procedures in this order, please consult <http://www.epa.gov/civilrights/t7filecmplt.htm>.
6. Affected persons who are included in bargaining units seeking information on deadlines and other procedures for filing a grievance, independent of the process provided in this Order, may consult applicable collective bargaining agreements, and consult with applicable union representatives. Federal employees not included in a bargaining unit, who are seeking information on deadlines and other procedures for filing an administrative grievance, may consult applicable procedures at [http://intranet.epa.gov/ohr/rmpolicy/ads/orders/3110\\_8a2.pdf](http://intranet.epa.gov/ohr/rmpolicy/ads/orders/3110_8a2.pdf)

## **B. OTHER TYPES OF HARASSMENT AND GENERAL MISCONDUCT**

1. Affected persons may be subject to incidents of harassment that are not based on one of the protected classes identified in this order. These include actions that are threatening, intimidating, bullying<sup>4</sup> and/or disturbing but are not alleged to be or determined to be based on race, color, sex (including pregnancy, sex stereotyping, gender identity or expression), national origin, religion, age, disability, prior protected EEO activity, sexual orientation, status as a parent, marital status, political affiliation, and protected genetic information. Assignment of work by a supervisor, a difference of opinion, a disagreement on a work-related matter, or any other similar communication that is expressed in a professional manner, are not considered harassment.
2. Affected persons who believe they have been subjected to these other forms of harassment or misconduct not based on protected class should still immediately report the matter to a first-line supervisor or, if the first-line supervisor is the alleged harasser, a higher-level supervisor or manager in his or her chain of command, or an agency HR official. Such reports will be handled through procedures contained in this order.

## **C. THREATS OF VIOLENCE<sup>5</sup>**

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<sup>4</sup> Bullying may rise to the level of harassment as defined in this order.

<sup>5</sup> Refer to EPA Order 1400.1 A2 EPA POLICY FOR PREVENTING VIOLENCE IN THE WORKPLACE.

1. All affected persons should report threats of violence, an actual assault, or any acts of violence immediately to agency security officials, local law enforcement, and the OIG.
2. All supervisors, managers, and agency HR officials must report threats of violence, and actual assault, or any acts of violence immediately to agency security officials, local law enforcement, and the OIG.

#### **IV. DEFINITIONS.**

For purposes of this order only, the following definitions apply:

- A. Harassment.** Any inappropriate, unwelcome conduct, verbal or physical, based on an individual's race, color, sex (including pregnancy, sex stereotyping, gender identity or expression), national origin, religion, age, disability, prior protected EEO activity, sexual orientation, status as a parent, marital status, political affiliation, protected genetic information, or other conduct that is threatening, intimidating, and/or bullying when the conduct can reasonably be considered to adversely affect the work environment or terms and conditions of the affected person's employment, or an employment decision impacting upon an affected person is based on the affected person's acceptance or rejection of such conduct. Examples of harassment may include, but are not limited to:
1. Oral or written communication related to membership in one of the groups set forth above that contains offensive name calling, jokes, slurs, negative stereotyping, hostility or threats. This includes comments or jokes that are distasteful or targeted at individuals or members of the groups set forth above.
  2. Nonverbal conduct, such as staring or leering that can objectively be construed as harassment based on the categories listed above.
  3. Physical conduct, such as assault or unwanted touching.
  4. Distribution or display of visual images, such as derogatory or offensive pictures, cartoons or drawings. Such prohibited images include those in hard copy or electronic form.
- B. Sexual Harassment.** Sexual harassment is harassment that involves conduct of a sexual nature, harassment involving any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature. This occurs when:
1. Submission to such conduct is made explicitly or implicitly a term or condition of an affected person's job, pay or career (i.e. Quid Pro Quo);

2. Submission to or rejection of such conduct by an affected person is used as a basis for career or employment or other work-related decisions affecting that affected person, or
3. Such conduct has the purpose or effect of unreasonably interfering with an affected person's performance or creates an intimidating, hostile or offensive environment.

**NOTE:** Sexual harassment need not involve members of the opposite sex and can be perpetrated by and against members of either sex.

- C. **Affected Person.** A federal employee, an applicant for employment, a grantee employee, a contractor employee, an EPA Federal Advisory Committee Act member, a Senior Environment Employee enrollee, a student volunteer or intern, or a Public Health Service Officer who believes he or she has been subjected to harassment in the course of his or her employment or performance of agency-related functions.
- D. **Agency Human Resource Official.** A Human Resource Officer/Project Management Officer, a headquarters Workplace Solutions staff member, or a Labor and Employee Relations Specialist. Referred to as agency HR official.
- E. **Agency Security Officials.** EPA security personnel or Federal Protective Service.
- F. **Alleged Harasser.** Any person, regardless of his or her employment relationship with the Agency, who allegedly subjected an affected person to workplace harassment. An alleged harasser could be a manager or supervisor, subordinate, co-worker, or non-agency employee.
- G. **Fact-finder.** A person who conducts a fact-finding inquiry under this order regarding allegations of harassment. The fact-finder must be a person who is not named in the allegation(s) of harassment and who has not witnessed the alleged incident(s) of harassment. The fact-finder must also not act as an advocate on behalf of either party. The fact-finder may be a supervisor or manager in the alleged harasser's organization, a supervisor or manager outside the alleged harasser's organization, an agency HR official, a contractor, or another uninvolved individual. The fact-finder, however, shall not be a subordinate employee to the alleged harasser.
- H. **Fact-finding.** Information gathered regarding allegations of harassment in order to provide a reasonable and sufficient basis for a conclusion by a decision-maker as to whether such conduct has occurred. The nature, extent and scope of the fact-finding will vary based on the circumstances.

- I. **Fact-finding Report.** A written report that may be prepared by the fact-finder depending on the nature of the fact-finding. The information contained in the fact-finding report should include a summary of all investigative steps taken and evidence gathered. The report does not render judgment on the allegations or evidence of harassment and does not contain any recommendations to the decision-maker; it merely sets forth the relevant facts, as revealed through the inquiry.

**NOTE:** Even when a fact-finding report is not necessary, there must be some documentation reflecting any action taken by the decision maker.

- J. **Decision-maker.** A supervisor or manager (typically in the alleged harasser's supervisory chain) with authority to make determinations as to whether the alleged harassment actually occurred and, if so, to take and contemporaneously document appropriate corrective action. The decision maker should not act as the fact-finder. The decision maker should not have been named in the allegation(s) of harassment or witnessed the alleged incident(s) of harassment, and may not serve as an advocate on behalf of either party. In situations where the alleged harasser is not an agency employee (e.g., grantee or contractor employee), the decision-maker will take corrective action to the extent permitted by law or regulation. In such situations, the decisionmaker may have to coordinate with the alleged harasser's employer to ensure that prompt corrective action is taken regarding the allegations of harassment.
- K. **Workplace Bullying.** Workplace bullying may include the deliberate, hurtful, negative, repeated mistreatment of one or more employees. Examples of workplace bullying include constant and unfair criticism, teasing, yelling, insulting, malicious gossiping, and aggressive behavior.

## V. **PROCEDURES.**

### A. **Reporting Harassment**

The individuals to whom allegations may be reported, as described in IV.A.1, IV.A.2, and IV.A.3 are supervisors, managers or agency HR officials and applies to reports of harassment by both affected person(s) and witnesses.

1. An affected person who believes he or she is being harassed should immediately report the matter to a first-line supervisor, or, if the first-line supervisor is the alleged harasser, then to the next manager in his or her chain of command, a higher-level supervisor or an agency HR official. Affected persons are required to provide a written account of such alleged conduct as soon as possible after reporting the alleged harassment.



2. Witnesses to alleged incidents of harassment may also report these incidents pursuant to the procedures contained in this order. Witnesses should report and may be expected to, provide a written description of the alleged incident(s) of harassment to his or her own supervisor or manager, to the supervisor or manager in the affected person's chain of command, or to an agency HR official.
3. In instances where an affected person designates a representative in writing, the affected employee's personal representative or union representative may report these incidents on behalf of the affected person pursuant to the procedures contained in this order. Any bargaining unit employee may request union representation at any time during these procedures in accordance with existing laws and collective bargaining agreements.
4. Any supervisor or manager or agency HR official, as described in V.A.1, V.A.2, and V.A.3 above, who receives a report of alleged harassment or otherwise becomes aware of harassment<sup>6</sup>, or an allegation of the same, shall immediately refer the matter to the alleged harasser's first-line supervisor. If the alleged harasser's first-line supervisor is named in the allegations, the matter should be referred to a higher-level supervisor in the alleged harasser's chain of command or an agency HR official.
5. If an affected person informs a supervisor, manager or an agency HR official about alleged harassment, but asks him or her to keep the matter confidential and takes no action, the individual receiving the allegation must inform the affected person of the supervisor's, manager's or agency HR official's obligation to report the allegations to the affected person's chain of command who will take steps described in IV.B. below, consistent with this order.
6. If the allegation involves an affected person or an alleged harasser who is not an agency employee, the individual receiving the allegation shall promptly contact an agency HR official or agency legal counsel to determine the appropriate course of action, including how the appropriate employer will be notified.

#### **B. Immediate Response**

Any agency official (supervisor, manager, or agency HR official) who becomes aware of, or is notified of, an allegation(s) of harassment, must immediately take the following actions:

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<sup>6</sup> EPA supervisors and managers are required to address or correct harassment regardless of whether an affected person files a complaint.

1. Coordinate with the agency HR official(s), agency legal counsel, as necessary, and an appropriate supervisor or manager in the alleged harasser's chain of command. Generally, the appropriate supervisor or manager will be the alleged harasser's first-line supervisor, unless s/he is named in the allegations. If the alleged harasser's first-line supervisor is named in the allegations, the matter should be referred to a higher-level supervisor in the alleged harasser's chain of command.
2. The supervisor or manager identified above, in coordination with agency HR official(s) and legal counsel, will promptly determine the appropriate decision-maker and fact-finder (who should not be the same person), if any, regarding the allegations. Information necessary to identify a decision maker may include the identity of the alleged harasser as well as others that may have been aware of the allegations and chose not to take action. In determining the appropriate fact-finder, management will also consider concerns or preferences expressed by the affected person (e.g. gender of the fact-finder or perceived biases regarding the designated fact-finder). Additionally, management will consider a request by the affected person for designation of a fact-finder from outside his/her chain-of-command or from outside the agency. In instances when an affected person makes such a request in writing, management will provide a written response to the affected person regarding his/her request. The affected person should be informed of the availability of the Employee Assistance Program.
3. The decision-maker, in consultation with agency legal counsel and an agency HR official, shall promptly assess the situation to determine the nature of the allegation and to identify what action(s), if any, should be immediately taken. The affected person should not be involuntarily transferred to another position pending fact-finding and review of the harassment allegations, or otherwise treated adversely in response to his/her allegations of harassment. Similarly, if the initial assessment does not indicate at least some basis to support the allegations of harassment, actions such as those listed below or any other action that would adversely impact the alleged harasser, should not be taken pending completion of the fact-finding.
  - a. Immediate action will include:
    1. Inform the alleged harasser that an allegation has been made, describe the nature of the allegation, and explain that the conduct, if true, must immediately cease.
    2. Inform the alleged harasser of the prohibition against retaliation against any person for raising allegations of harassment, or participating in a fact-finding regarding such allegations.

3. Instruct the affected person and alleged harasser to refrain from initiating work-related contact with each other (in person, via email, or by telephone) pending the outcome of the fact-finding. In order to recognize that not all situations require an absolute prohibition on communications, allow managerial discretion to tailor an appropriate response to the situation at hand, and to avoid the potentially negative impact that the prior wording could possibly have. The scope and parameters of this limitation should be determined based on the severity of the allegations raised, and in consultation with agency legal counsel and the agency HR official.
4. Advise all persons involved that the confidentiality of harassment allegations and the identity of all involved, particularly the affected person(s) and alleged harasser(s), will be protected to the extent possible, and will only be revealed to persons with a need to know.
5. Inform the affected person and the alleged harasser that the agency is obligated to conduct appropriate fact-finding, including preparation of a fact-finding report (if appropriate), regardless of the manner in which the allegations came to management's attention and regardless of the affected person's desire that the allegations remain confidential or not be reported.

**NOTE:** All supervisors, managers, and agency HR officials must report threats of violence, actual assaults, or any acts of violence immediately to agency security officials, local law enforcement, and the OIG.

b. Immediate action also may include:

- (1) Making work scheduling changes so as to avoid contact between the affected person and alleged harasser.
- (2) Temporarily transferring the alleged harasser.
- (3) When circumstances do not permit the physical separation of the alleged harasser and the affected person, pending the outcome of the fact-finding, the alleged harasser may be placed on administrative leave. When utilizing this option, managers should ensure the amount of time an employee is placed on non-disciplinary leave with pay is minimized to the extent possible and appropriate.
- (4) Where the alleged harassment involves conduct that may be criminal in nature (e.g., assault or battery), the matter should be immediately referred to an appropriate law enforcement entity including FPS and to the OIG. In situations where a law enforcement agency or the OIG initiates an investigation, any fact-finding conducted under this order

should only be conducted when coordinated with and authorized by the law enforcement agency or the OIG. In cases involving the OIG, the decision-maker, in consultation with agency legal counsel and an agency HR official, should coordinate with the OIG on other steps that may be taken to prevent further harassment to the affected person pending an OIG review or investigation into the allegations.

**C. Fact-finding**

Generally, the fact-finder will complete the fact-finding and, if appropriate, deliver a fact-finding report that has been reviewed by agency legal counsel and an agency HR official to the decisionmaker, within 15 business days of his or her designation. The time period for completing the fact-finding and report may be extended by the decision-maker under certain circumstances (e.g., unavailability of witnesses).

1. Prior to conducting any fact-finding, the fact-finder should develop a basic plan in coordination with agency legal counsel and an agency HR official regarding information to be gathered in the inquiry. The fact-finder should consult with agency legal counsel and an agency HR official as necessary throughout the fact-finding. The fact-finder should refer to Appendix A, which contains sample interview questions that should be tailored to the particular allegation(s) at issue.
2. Fact-finding will usually include, at a minimum, interviews with:
  - a. The affected person(s);
  - b. The alleged harasser(s);
  - c. Any witnesses to the alleged harassment, and
  - d. Any other person who could reasonably be expected to have relevant information that could corroborate or refute allegations, (e.g., the person did not witness the harassment but spoke to the affected person immediately after the alleged event and could provide useful information).
3. The fact-finder must remind the affected person, alleged harasser, and any other persons interviewed about the agency's prohibition against retaliation. Additionally, the fact-finder must advise any interviewee, prior to the start of the interview, that he or she will be required to certify the accuracy of his/her written statement, or of the interview summary prepared by the fact-finder, in accordance with Appendix C.

4. The fact-finder must complete summaries of any interviews conducted and obtain signatures from interviewed persons attesting to their accuracy, or obtain signed statements, affidavits, declarations, or transcribed interviews, under oath, as appropriate. If an interviewed person refuses to attest to the accuracy of the information he or she provides to the fact-finder that is reflected in an interview summary or other document prepared by the fact-finder, the factfinder may still include such document in the fact-finding report for consideration by the decision-maker. In such situations, the fact-finder must ask the interviewed person to explain his/her refusal for attesting to the accuracy of the document, and include such explanation in the fact-finding report.

**NOTE:** Generally, an affected person or an interviewee will not be provided a copy of the fact-finding report, or other materials generated or obtained in the course of the fact-finding, with the exception of a copy of the written statement he or she provides, or the summary of his or her interview prepared by the fact-finder.

5. The fact-finding shall be confined solely to the reported allegation(s) of harassment. If additional unrelated allegations of harassment are made, or evidence of additional harassment comes to light during the fact-finding, the fact-finder shall immediately alert the decisionmaker for a determination (in consultation with agency legal counsel and an agency HR official) regarding whether the scope of the fact-finding should be expanded, or a new and separate fact-finding should occur.
6. In accordance with the applicable laws and regulations, all agency employees, including supervisors and managers, are required to cooperate in fact-findings regarding allegations of harassment. The fact-finder shall consult with agency legal counsel and an agency HR official regarding any refusal to cooperate in the fact-finding inquiry. Employees who are members of bargaining units represented by a union will be afforded any applicable rights and procedures required by law and under collective bargaining agreements during the fact-finding including the right to be represented during an interview. The fact-finder should consult with agency legal counsel and an agency HR official regarding any questions relating to an employee's right to representation.

#### **D. Decision Making**

1. The decision-maker must promptly:
  - a. Review the results of the fact-finding;
  - b. Consult with agency legal counsel and an agency HR official;

- c. Determine whether the results demonstrate that any harassment occurred, and
- d. Take any appropriate corrective action, in consultation with agency legal counsel and an agency HR official.

**NOTE:** In some circumstances, it may be difficult for a decision-maker to reach a determination because of contradictory information and a lack of documentary or eyewitness corroboration. In such cases, the decision-maker should perform a credibility assessment based on factors such as those set forth in Appendix A.

- 2. Corrective action, if warranted, should be designed to stop the harassment, put the affected person in the position he or she would have been in, to the extent possible, had the harassment not occurred, and ensure that the harassment does not recur. Corrective action need not be what the affected person requests or prefers, as long as it is effective. Corrective action should not adversely affect the affected person (e.g., if it is necessary to separate the parties, the affected person generally should not be moved without his or her consent).

Corrective action, under this order, may include, but is not limited to:

- a. Restoration of leave taken because of the harassment if it is determined that leave was taken as a direct result of harassment;
- b. Offer of reinstatement to a former employee when it is determined that he or she left EPA involuntarily primarily due to harassment;
- c. Expunging negative evaluation (s) in employee's personnel file that arose from the harassment if it is determined that the negative evaluation directly resulted from harassment;
- d. Training;
- e. Reassignment of the alleged harasser, and/or,
- f. Disciplinary action<sup>7</sup>.

**NOTE:** In the event the alleged harasser is not an EPA employee, coordinate corrective action with the appropriate employer; such action may include termination of the alleged harasser's access to EPA facilities and equipment.

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<sup>7</sup> Any disciplinary action will be taken in accordance with the applicable regulations, Agency orders, and collective bargaining agreements. The decision-maker should consult with an Agency HR official and Agency legal counsel on any disciplinary action to be taken.

3. If the decision-maker concludes that harassment has occurred, and takes corrective action, he or she shall notify the affected person that corrective action has been taken (without revealing either that any disciplinary action against the alleged harasser has occurred, or any other specific information that would violate the privacy rights of the alleged harasser), and encourage the affected person to immediately report any further harassment or retaliation.
4. If the decision-maker concludes that harassment has not occurred, the decision-maker will inform the affected person and alleged harasser that the harassment allegations were not supported by the information collected during the fact-finding.
5. Regardless of the conclusion, the decision-maker will inform the affected person and the alleged harasser of the prohibition against retaliation against anyone who reported allegations of harassment, and/or participated in the fact-finding.
6. The decision-maker shall make a record of conclusions reached and action(s) taken, if any. Records and evidence gathered during the fact-finding will be treated as confidential agency records and maintained in accordance with the applicable record retention laws, regulations and policies, including the Privacy Act.
7. The decision maker will provide the union with the same information (described in paragraphs 3 and 4 above) provided to affected persons and alleged harassers who are members of the bargaining unit.

#### **VI. PROTECTION AGAINST RETALIATION.**

Retaliation against any person who reports harassment, or who participates in a fact-finding, is prohibited and may result in disciplinary action, including dismissal.

#### **VII. REVIEW DATE.**

This order will be reviewed three (3) years from the date of approval to ensure that it is meeting its stated purpose. "Failure to conduct such review within the specified period will not void the requirements and procedures contained in the order."

#### **VIII. TRAINING.**

All managers and supervisors are required to complete training on these procedures. EPA will also ensure training is available for all employees.

**IX.     REFERENCES.**

- A. Administrator's Anti-Harassment Policy Statement**
- B. 29 C.F.R. Part 1614, Federal Sector Equal Employment Opportunity**
- C. 5 C.F.R. Part 752; Adverse Actions**
- D. EEOC's Enforcement Guidance: "Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors" (June 18, 1999), available at: <http://www.eeoc.gov/policy/docs/harassment.html>**
- E. EPA Order 1000.31A4, Discrimination on the Basis of Sexual Orientation, Gender Identity, Status as a Parent, Marital Status, or Political Affiliation**
- F. EPA Order 3110.6B, Adverse Actions**
- G. EPA Order 3110.8A2, EPA Administrative Grievance System**
- H. EPA Order 3120.1, Conduct and Discipline**
- I. EPA Order 3120.2, Conduct and Discipline Senior Executive Service**
- J. Applicable Collective Bargaining Agreements**



## APPENDIX 4



### THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON D C 20460

MAR 31 2016

I am proud to affirm the U.S. Environmental Protection Agency's commitment to equal employment opportunity for all EPA employees and applicants for employment. Fostering a diverse and inclusive workplace through EEO is essential to fulfilling our mission to protect human health and the environment.

The EPA cannot and will not tolerate discrimination within the workplace based on race; color; sex, including pregnancy, gender stereotyping, gender identity or gender expression; national origin; religion; age; physical or mental disability; status as a parent; marital status; sexual orientation; transgender status; political affiliation; or protected genetic information. In addition, the EPA will not tolerate any type of harassment – either sexual or nonsexual – of any employee or applicant for employment. Employment decisions must be made in accordance with merit system principles contained in 5 U.S.C. § 2301.

EPA managers are expected to continue to provide first-class leadership in supporting the agency's EEO program by taking steps to promote EEO in all facets of employment, including recruitment, hiring, promotion, performance assessment, awards or career-development opportunities. I ask that all EPA employees, including managers and staff, take responsibility for reporting and addressing discriminatory conduct and preventing all types of discrimination, including workplace harassment.

The EPA promotes the use of alternative-dispute-resolution methods to resolve workplace disputes or EEO complaints. Managers are reminded that their participation in agency-approved alternative-dispute-resolution efforts to resolve EEO complaints is required, absent extraordinary circumstances as determined by the Office of Civil Rights' director or designee.

Any employee or applicant for employment who believes that he or she has been subjected to discrimination and elects to seek redress for discrimination must initiate the EEO complaint process within 45 days of the alleged discriminatory event by contacting the EPA's Office of Civil Rights Employment Complaints Resolution staff at (202) 564-7272 or an EEO officer at the regional or laboratory level. See also 29 CFR Part 1614, *Federal Sector Equal Employment Opportunity*, or EPA Order 1000.31A4, *Discrimination on the Basis of Sexual Orientation, Gender Identity, Status as a Parent, Marital Status, or Political Affiliation*, as applicable. In addition, an employee or applicant for employment who believes he or she was subjected to workplace harassment should also review EPA Order 4711, *Procedure for Addressing Allegations of Workplace Harassment*, for information on how to report allegations of workplace harassment.

Our success in advancing the EPA's mission hinges on a professional, productive, diverse and inclusive workplace. I appreciate your shared commitment to equal opportunity at the EPA and look forward to continuing our work together.

A handwritten signature in black ink, appearing to read "Gina McCarthy".  
Gina McCarthy

